
(2014) 02 UK CK 0006

In the Uttarakhand High Court

Case No : Writ Petition No. 863 of 2009 (M/S)

Aslam and Others

APPELLANT

Vs

Harendra Singh Negi

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 49, 52 — Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 331

Citation : (2015) 128 RD 20 : (2015) 1 UC 159

Hon'ble Judges : Brahma Singh Verma, Acting. C.J.

Bench : Single Bench

Advocate : Arvind Vashisth, Advocate, for the Appellant; Sudhir Singh, for the Respondent

Final Decision : Allowed

Judgement

Brahma Singh Verma, Actg. C.J.?By means of this writ petition, the petitioner has sought a writ in the nature of certiorari quashing the part of order dated 13.3.2009 passed by IV F.T.C./Additional District Judge, Haridwar in Civil Revision No. 91 of 2008 as well as quashing of order dated passed by Civil Judge (S.D.) Roorkee in O.S. No. 21 of 2006. Brief facts of the case are that respondent No. 1 filed a suit being O.S. No. 21 of 2006 against the petitioner seeking a decree of injunction. The suit was contested by the petitioner/defendant by filing written statement and alleged that the disputed land is an agricultural land and the Civil Court is not competent to entertain the suit and that the suit is barred by Section 331 of U.P.Z.A. & L.R. Act. Besides this, it was also alleged that the consolidation proceedings in the Village had come to an end and notification u/s. 52 of U.P. Consolidation of Holdings Act (for short, C.H. Act) has been issued, therefore the suit is barred by Section 49 of the C.H. Act. On the basis of pleadings of parties, relevant issues were framed by the learned Civil Judge (S.D.) in the matter. Apart from other issues, issue No. 3 was framed to the effect "whether the suit is barred by Section 331 of U.P.Z.A. & L.R. Act". Issue No. 4 was framed "whether the suit is barred by Section 49 of C.H. Act". Vide order dated 17.10.2008, both

these issues i.e. issue Nos. 3 and 4 were decided by learned Civil Judge (S.D.) Roorkee against the petitioner/defendant. Being aggrieved, the petitioner/defendant filed a revision in the court of District Judge Hardwar. Vide order dated 13.3.2009, the revisional court remanded the matter to the trial court on issue No. 4. However, the findings given by the trial court on issue No. 3 were upheld by the revisional court. Hence, this writ petition has been filed by the petitioner.

2. Learned counsel for the petitioner has contended that the learned Civil Judge has committed manifest error of law by observing whether the disputed land is situated in plot No. 507B or 505B.

3. Learned counsel for the petitioner has contended that the learned Civil Court, so far as it relates to giving finding on issue No. 3 is concerned, has committed manifest error of law in view of the fact that the property is an agricultural property and due to dispute of area, a question of title, which even otherwise always involved in injunction matter, is involved and the Civil Court had no jurisdiction to entertain the suit.

4. The petitioner contends that the suit was filed by the plaintiff after expiry of twenty years and since the land is recorded in the name of petitioner/defendant therefore suit for injunction is not maintainable before the civil court.

5. Per contra, learned counsel for the respondent while supporting the order of the courts below has contended that it is only a dispute of demarcation therefore the suit is maintainable.

6. I have heard learned counsel for the parties and perused the record.

7. The only issue which is to be decided by this Court is as to whether the suit for injunction is maintainable in the civil court or not and whether it is barred by Section 331 of U.P.Z.A. & L.R. Act.

8. Admittedly, respondent/plaintiff is not a recorded tenure holder on plot No. 505B.

9. In Kamla Shanker and others vs. The III Addl. D.J. Mirzapur and others, 1998 (89) RD 484, Hon''ble Allahabad High Court has held if tenure holder is not recorded, suit for injunction is not maintainable in the civil court and would be cognizable by revenue court only. Therefore, the suit is barred by Section 331 of U.P.Z.A. & L.R. Act.

10. This fact is not disputed that consolidation proceedings were initiated in the village and were closed by way of notification issued under Section 52. Therefore, the suit is also barred by Section 49 of C.H. Act. In the light of aforesaid and in view of the above case-law, the writ petition is allowed. Issue No. 3 is decided in favour of the petitioner/defendant and it is held that suit is not cognizable by the civil court.